PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1866

AN ACT to amend the Indiana Code concerning Medicaid.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-7-2-131.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 131.3. "Minimum data set" or "MDS", for purposes of IC 12-15-41, has the meaning set forth in IC 12-15-43-1.**

SECTION 2. IC 12-15-14-1, AS AMENDED BY SEA 309-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as provided in subsection (b), payment of services for nursing facilities shall be determined under the same criteria and in a uniform manner for all facilities providing services.

(b) In addition to reimbursement under the uniform rates of payment developed for all nursing facilities under subsection (a):

(1) nursing facilities that are owned and operated by a governmental entity may receive any additional payments that are permitted under applicable federal statutes and regulations; and

(2) nursing facilities that are not owned and operated by a governmental entity may receive any additional payments that are permitted under applicable federal statutes and regulations.

(c) Each governmental transfer or other payment mechanism that the office implements under this chapter must maximize the amount of federal financial participation that the state can obtain through the

intergovernmental transfer or other payment mechanism. **All money used to generate additional federal financial participation under this chapter through an intergovernmental transfer or other payment mechanism and any additional payments that are received by the state through an intergovernmental transfer or other payment mechanism under this chapter shall be distributed to Medicaid nursing facilities.**

SECTION 3. IC 12-15-43 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 43. Annual Review of Medicaid Nursing Facility Residents

Sec. 1. "Minimum data set" or "MDS" means a core set of screening and assessment elements, including common definitions and coding categories, used as:

(1) a comprehensive assessment for all residents of long term care facilities certified to participate in the Medicaid program; and

(2) a standardized communication about resident problems, strengths, and conditions within the facilities, between facilities, and between facilities and outside agencies.

Sec. 2. A nursing facility certified to provide nursing facility care to Medicaid recipients shall submit to the office annually minimum data set (MDS) information for each of its Medicaid residents.

Sec. 3 (a) The office or the office's designated contractor shall evaluate the MDS information submitted for each Medicaid resident. The evaluation must consist of an assessment of the following:

(1) The individual's medical needs.

(2) The availability of services, other than services provided in a nursing facility, that are appropriate to the individual's needs.

(3) The cost effectiveness of providing services appropriate to the individual's needs that are provided outside, rather than within, a nursing facility.

(b) The assessment must be conducted in accordance with rules adopted under IC 4-22-2 by the office.

Sec. 4. If the office determines under section 3 of this chapter that an individual's needs could be met in a cost effective manner in a setting other than a nursing facility, the office shall counsel the individual and provide the individual with written notice

containing the following:

(1) The reasons for the office's determination.

(2) A detailed description of services available to the individual that, if used by the individual, would make the continued placement of the individual in a nursing facility inappropriate. The detailed description of services available must do the following:

(A) Include a determination of whether the provider of the services available actually has the capacity to provide the services.

(B) State the name of the provider of the services.

(C) Designate the specific site at which the services are available.

Sec. 5. If an individual appeals a discharge from a nursing facility under this chapter, the office shall continue payment to the nursing facility until the individual has exhausted the appeal process.

SECTION 4. IC 16-18-2-337.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 337.8. "Standard serological test for HIV", for purposes of IC 16-41-6, has the meaning set forth in IC 16-41-6-0.5.**

SECTION 5. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 0.5. As used in this chapter, "standard serological test for HIV" means a test recognized by the state department as a standard serological test for the antibody or antigen to the human immunodeficiency virus (HIV).**

SECTION 6. IC 16-41-6-1, AS AMENDED BY HEA 1207-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as provided in subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to the human immunodeficiency virus (HIV) without the consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or

treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4, **5, 6, or 7** of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

The test for the antibody or antigen to HIV may not be performed on a woman described in section 5, 6, or 7 of this chapter if the woman refuses to consent to the test under section 5, 6, or 7 of this chapter.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 7. IC 16-41-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) Subject to subsection ~~(c),~~ **(f),** if:

(1) the mother of a newborn infant has not had a test performed under ~~IC 16-41-6-2.5~~ **section 5, 6, or 7 of this chapter;**

(2) the mother of a newborn infant has refused a test for the newborn infant to detect the ~~human immunodeficiency virus~~ HIV or the antibody or antigen to HIV; and

(3) a physician believes that testing the newborn infant is medically necessary;

the physician **overseeing the care of the newborn infant** may order a confidential test for the newborn infant in order to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and

(2) provide ~~human immunodeficiency virus~~ HIV information and counseling to the mother. The information and counseling must include the following:

(A) The purpose of the test.

(B) The risks and benefits of the test.

(C) A description of the methods of HIV transmission.

(D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV

transmission and HIV transmission through breast milk.

(E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) **If a test ordered under subsection (a) is positive, the physician who ordered the test shall inform the mother of the newborn infant of all treatment options available to the newborn infant and the prognostic implications of the disease.**

(f) If ~~the~~ **a** parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

~~(f)~~ **(g)** The state department shall adopt rules under IC 4-22-2 to carry out this section.

(h) The results of a test performed under this section are confidential.

SECTION 8. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 5. (a) This section applies to:**

(1) a physician licensed under IC 25-22.5; or

(2) an advanced practice nurse licensed under IC 25-23;

who provides prenatal care within the scope of the provider's license.

(b) Subject to subsection (c), an individual described in subsection (a) who:

(1) diagnoses a pregnancy of a woman; or

(2) is primarily responsible for providing prenatal care to a pregnant woman;

shall take or cause to be taken a sample of the pregnant woman's blood and shall submit the sample to an approved laboratory for a standard serological test for HIV.

(c) A pregnant woman has a right to refuse an HIV test under this section. An individual described in subsection (a), or the individual's designee, shall inform the pregnant woman that:

(1) the individual is required by law to order an HIV test unless the pregnant woman refuses; and

(2) the pregnant woman has a right to refuse.

(d) An individual described in subsection (a), or the individual's designee, shall:

(1) provide the pregnant woman with a description of the

methods of HIV transmission;

(2) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk;

(3) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services; and

(4) explain to the pregnant woman:

(A) the purpose of the test; and

(B) the risks and benefits of the test.

(e) An individual described in subsection (a) shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsections (c) and (d).

(f) If a pregnant woman refuses to consent to an HIV test under this section, the refusal must be noted in the pregnant woman's medical records.

(g) If a test ordered under subsection (b) is positive, the individual described in subsection (a) who ordered the test shall inform the pregnant woman of all treatment options available to her and the prognostic implications of the disease.

(h) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(i) The results of a test performed under this section are confidential.

SECTION 9. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6. (a) Subject to subsection (b), an individual other than a physician who is permitted by law to attend a pregnant woman, but who is not permitted by law to take blood specimens, shall cause a sample of the pregnant woman's blood to be taken by or under the direction of a licensed physician, who shall submit the sample to an approved laboratory for a standard serological test for HIV.**

(b) A pregnant woman has a right to refuse an HIV test under this section. The individual who attends the pregnant woman under subsection (a) shall inform the pregnant woman that:

(1) the individual is required by law to request that a physician order an HIV test unless the pregnant woman refuses; and

(2) the pregnant woman has a right to refuse.

(c) The individual who attends the pregnant woman under

subsection (a) shall:

(1) provide the pregnant woman with a description of the methods of HIV transmission;

(2) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk;

(3) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services; and

(4) explain to the pregnant woman:

(A) the purpose of the test; and

(B) the risks and benefits of the test.

(d) The individual who attends the pregnant woman under subsection (a) shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsections (b) and (c).

(e) If a pregnant woman refuses to consent to an HIV test under this section, the refusal must be noted in the pregnant woman's medical records.

(f) If a test ordered under subsection (a) is positive, the individual who attends the pregnant woman shall inform the pregnant woman of all treatment options available to her and the prognostic implications of the disease.

(g) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(h) The results of a test performed under this section are confidential.

SECTION 10. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 7. (a) Subject to subsection (b), if, at the time of delivery, there is no written evidence that a standard serological test for HIV has been made in accordance with section 5 or 6 of this chapter, the individual in attendance at the delivery shall take or cause to be taken a sample of the blood of the woman at the time of the delivery and shall submit the sample to an approved laboratory for a standard serological test for HIV.**

(b) A pregnant woman has a right to refuse an HIV test under this section. The individual in attendance at the delivery shall inform the pregnant woman that:

(1) the individual is required by law to order an HIV test unless the pregnant woman refuses; and

(2) the pregnant woman has a right to refuse.

(c) The individual in attendance at the delivery shall:

(1) provide the pregnant woman with a description of the methods of HIV transmission;

(2) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk;

(3) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services; and

(4) explain to the pregnant woman:

(A) the purpose of the test; and

(B) the risks and benefits of the test.

(d) The individual in attendance at the delivery shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsections (b) and (c).

(e) If a pregnant woman refuses to consent to an HIV test under this section, the refusal must be noted in the pregnant woman's medical records.

(f) If a test ordered under subsection (a) is positive, the individual in attendance at the delivery shall inform the woman of all treatment options available to her and the prognostic implications of the disease.

(g) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(h) The results of a test performed under this section are confidential.

SECTION 11. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8. (a) The state department shall require, on the confidential portion of each birth certificate and stillbirth certificate, in addition to the information otherwise required to be included on the certificate, the following information:**

(1) Whether a standard serological test for HIV was performed for the woman who bore the child.

(2) If a standard serological test for HIV was performed, the date the blood specimen was taken.

(3) If a standard serological test for HIV was performed, whether the test was performed during pregnancy or at the time of delivery.

(4) If a standard serological test for HIV was not performed,

the reason why the test was not performed.

(b) An individual who prepares a birth certificate or a stillbirth certificate shall include the information required in subsection (a) on the confidential portion of the certificate.

SECTION 12. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 9. The state department shall distribute to physicians and other individuals who are allowed by law to attend a pregnant woman information available from the federal Centers for Disease Control and Prevention (CDC) that explains the treatment options available to an individual who has a positive test for HIV.**

SECTION 13. IC 35-46-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 7. Offenses Against Persons Receiving Care

Sec. 1. As used in this chapter, "health care provider" means:

(1) a hospital licensed under IC 16-21;

(2) a health facility licensed under IC 16-28;

(3) a housing with services establishment that is required to file a disclosure statement under IC 12-10-15;

(4) a continuing care retirement community that is required to file a disclosure statement under IC 23-2-4;

(5) a home health agency licensed under IC 16-27;

(6) a hospice licensed under IC 16-25;

(7) an entity that provides licensed or certified health care professionals to:

(A) a health care provider; or

(B) a person who is in need of, or receives, professional health care services;

(8) a community mental health center (as defined in IC 12-7-2-38);

(9) a private psychiatric hospital licensed under IC 12-25;

(10) a state institution (as defined in IC 12-7-2-184); or

(11) a community residential facility for the developmentally disabled that is licensed under IC 12-28-5.

Sec. 2. This chapter does not apply to the following:

(1) A gift or donation of money or another asset given to:

(A) a health care provider in the corporate name of the health care provider; or

(B) an entity that is organized under Section 501(c)(3) of the Internal Revenue Code.

(2) A gift or loan of money or another asset given by a person

who receives services from a health care provider to a member of the person's family who:

(A) is employed by a health care provider; or

(B) owns, wholly or jointly, a health care provider.

(3) A bequest of personal property or devise of real property made in an executable will as described in IC 29-1-5-5 to a health care provider, an owner, an employee, or an agent of a health care provider.

(4) The purchase of a security (as defined in IC 23-2-1-1) that is traded on a national or regional exchange.

(5) A gift or gratuity, not exceeding five hundred dollars ($500) in the aggregate per year per protected person, to an employee of a health care provider.

(6) A gift or donation of money or another asset given to purchase or otherwise acquire a product, a service, or an amenity for the use, entertainment, or enjoyment of persons receiving services from a health care provider.

Sec. 3. (a) The following transactions are subject to the requirements of subsection (b):

(1) A gift, a donation, a loan, or an investment from a person who receives services from a health care provider to an owner, employee, or agent of the health care provider in the name of the owner, employee, or agent.

(2) A loan or an investment from a person who receives services from a health care provider to the health care provider in the corporate name of the health care provider.

(b) A transaction described in subsection (a) must be executed in writing and witnessed by two (2) disinterested parties. Each witness shall sign a document that describes the transaction in the presence of:

(1) the person who makes the transaction; and

(2) the other witness.

(c) A health care provider, or an owner, an employee, or an agent of a health care provider, who:

(1) receives a gift, a donation, a loan, or an investment from a person who receives services from a health care provider; and

(2) fails to conform with the requirements of subsection (b);

commits a Class A infraction. Without regard to the amount of the transaction, the court that imposes the penalty for the infraction violation may, upon the request of the prosecuting attorney, order the health care provider to pay the amount received in violation of

this section, plus interest from the date of the transaction, to the protected person or the estate of the protected person.

SECTION 14. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2001]: IC 16-18-2-290.5; IC 16-41-6-2.5.

SECTION 15. [EFFECTIVE UPON PASSAGE] **(a) The definitions in 405 IAC 1-14.6, as in effect on January 1, 2001, apply throughout this SECTION.**

(b) The state's rate setting contractor shall calculate the median for each rate component each quarter using all cost reports received by the state or the state's rate setting contractor within one hundred fifty (150) days after each provider's fiscal year end. If an audit report has been issued for a provider within one hundred fifty days (150) of the provider's fiscal year end, the rate setting contractor may request additional information relative to that audit report. If the audit report is issued later than one hundred fifty (150) days of the provider's fiscal year end, the rate setting contractor may not request additional information relative to that audit report for that rate review.

SECTION 16. [EFFECTIVE UPON PASSAGE] **(a) The office of the secretary of family and social services established by IC 12-8-1-1 may not do any of the following:**

(1) Repeal 405 IAC 1-14.6.

(2) Amend 405 IAC 1-14.6 in any manner that reduces reimbursement for nursing facilities or adopt any other rule under IC 4-22-2 that reduces reimbursement for nursing facilities without statutory authority for the amendment.

(b) This SECTION expires July 1, 2004.

SECTION 17. [EFFECTIVE UPON PASSAGE] **(a) Not later than August 1, 2001, the office of the secretary of family and social services shall identify sources of state or local government funds eligible for federal financial participation under the Medicaid program (42 U.S.C. 1396 et seq.), including sources for intergovernmental transfers from government owned and operated health care entities, including the following:**

(1) Health facilities.

(2) Hospitals.

(3) Medical and dental schools.

(4) University facilities.

(5) Community health centers.

(6) Mental health, alcohol, and drug abuse facilities and programs.

(7) Mental retardation and developmental disabilities facilities

and programs.

(8) Psychiatric facilities and programs.

(9) Children's facilities and programs.

(10) Schools.

(11) Any other government owned and operated health related facilities, programs, or services.

(b) Not later than August 1, 2001, the office of the secretary of family and social services shall identify sources of state or local government funds that:

(1) can be certified as being eligible for federal financial participation under 42 U.S.C. 1396b(w)(6)(A) and 42 CFR 433.51; and

(2) are paid to health care entities, including the following:

(A) Health facilities.

(B) Hospitals.

(C) Medical and dental schools.

(D) University facilities.

(E) Community health centers.

(F) Mental health, alcohol, and drug abuse facilities and programs.

(G) Mental retardation and developmental disabilities facilities and programs.

(H) Psychiatric facilities and programs.

(I) Children's facilities and programs.

(J) Schools.

(K) Any other health related facilities, programs, or services.

(c) Not later than August 1, 2001, the office of the secretary of family and social services shall identify the availability of Medicaid disproportionate share payments for state institutions for mental disease for any prior state fiscal year.

(d) Before August 1, 2001, the office of the secretary of family and social services shall identify court ordered health care services that are paid by the state or by local units of government.

(e) Based on the information identified and calculated under subsections (a) through (d), the office of the secretary of family and social services shall, not later than August 1, 2001, do the following:

(1) Develop Medicaid health care coverage programs or health care funding mechanisms. Programs and mechanisms developed under this subdivision may not require the reduction or cessation of current programs using

intergovernmental transfers or certification of government funds as the state's share of Medicaid payments.

(2) Submit a state plan amendment to the federal Health Care Financing Administration to apply for approval of the programs or mechanisms developed under subdivision (1).

(f) Before July 1, 2001, the office shall publish public notice in accordance with the regulations of the federal Health Care Financing Administration of the office's intent to implement the programs and mechanisms developed under subsection (e).

(g) This SECTION expires July 1, 2004.

SECTION 18. [EFFECTIVE UPON PASSAGE] **(a) Not later than August 1, 2001, the office of the secretary of family and social services shall do the following:**

(1) Identify opportunities for Medicaid waivers or expansions, paid with no new state tax funds, to cover individuals with health care needs.

(2) Identify entities afforded Indiana tax credits on the basis of their payment of taxes or assessments used to directly fund health care services or insurance coverage for individuals who would be eligible for coverage under a Medicaid waiver or expansion identified in subdivision (1).

(3) Calculate increased tax revenues realized by the state through the reduction in Indiana tax credits taken by entities described in subdivision (2) due to the reduction in taxes or assessments paid by the entities resulting from the fact that the health care needs of individual identified in subdivision (2) are covered by Medicaid.

(b) This SECTION expires July 1, 2004.

SECTION 19. [EFFECTIVE UPON PASSAGE] **(a) The office of the secretary of family and social services shall, not later than October 1, 2001, file a report with the legislative council regarding the office's activities under this act.**

(b) This SECTION expires July 1, 2004.

SECTION 20. [EFFECTIVE JULY 1, 2001] **(a) The state department of health established by IC 16-19-1-1 shall report quarterly to the select joint committee on Medicaid oversight concerning licensure inspections of health facilities under IC 16-28. The report must include the following information:**

(1) The number of inspections that were completed.

(2) The number of citations issued per inspection, including the scope and severity of the citations by the type of inspection.

(3) The number of evening and weekend inspections.

(4) The number of complaints received, investigated, and substantiated.

(5) The number of complaints in each priority level.

(6) The response time of the state department of health in investigating complaints.

(7) A summary of the citations that have been appealed to an informal dispute resolution process and the results of the appeals.

(8) A summary of the citations that have been appealed to an administrative law judge and the results of the appeals.

(9) An analysis of citations by scope and severity by survey region.

The information in the report must also compare the statistics with other states in Region V of the federal Health Care Financing Administration and for the country as a whole where statistics from other states are available.

(b) This SECTION expires July 1, 2006.

SECTION 21. [EFFECTIVE JULY 1, 2001] **The state department of health established by IC 16-19-1-1 shall develop a plan and seek federal approval to qualify the Indiana Veterans' Home for reimbursement of services and other expenses that could be eligible under Medicaid. The plan developed under this section must be structured to maximize federal Medicaid reimbursement for the Veterans' Home. Subject to approval of the budget agency, any revenue accruing to the Indiana Veterans' Home from the receipt of Medicaid reimbursement may be used to augment appropriations made to the office of Medicaid policy and planning established by IC 12-8-6-1 for use in funding long term care.**

SECTION 22. **An emergency is declared for this act.**

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana